

D/F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
-----X  
LEON JONES,

Petitioner,

-against-

WILLIAM LEE,

Respondent.  
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FEUERSTEIN, J.

**ORDER**

11-CV-510 (SJF)

**FILED**  
IN CLERK'S OFFICE  
U S DISTRICT COURT E D N Y

★ FEB 21 2012 ★

**LONG ISLAND OFFICE**

On or about January 17, 2011, incarcerated pro se petitioner Leon Jones ("petitioner") filed a petition in this Court seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. [Docket Entry No. 1]. Respondent has moved to dismiss the petition as time-barred. [Docket Entry No. 6]. In opposition to the motion to dismiss, petitioner argues: (1) that he timely filed the petition on September 21, 2010; (2) that the Court Clerk's Office did not docket that petition; and (3) that he filed his petition a second time on or about January 17, 2011. [Docket Entry No. 7]. Petitioner claims that the "originally filed petition was misplaced or lost."

Since respondent has not opposed or otherwise responded to this argument, its motion to dismiss is denied at this time. It is therefore ORDERED that, on or before **Monday, April 16, 2012**, respondent shall file and serve either: (1) a response to the merits of the petition; or (2) a brief supplementing its motion to dismiss and specifically addressing the timeliness issues raised in petitioner's April 11, 2011 submission to the Court [Docket Entry No. 7]. If respondent chooses to supplement its motion to dismiss, he shall submit any available logs recording the

date and time at which the prison authorities received the petition for mailing. See generally Houston v. Lack, 487 U.S. 266, 275, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) (“The pro se prisoner . . . hands [his legal filings] over to prison authorities who have well-developed procedures for recording the date and time at which they receive papers for mailing and who can readily dispute a prisoner’s assertions that he delivered the paper on a different date.”); see also Brown v. United States, No. 10-CV-2641, 2011 WL 2444815, at \*1-2 (E.D.N.Y. Jan. 20, 2011).

**Petitioner’s opposition to respondent’s filing, if any, shall be filed on or before Wednesday, May 16, 2012.** In accordance with Federal Rule of Civil Procedure 77, the Clerk of Court is respectfully directed to serve copies of this order upon all parties.

**SO ORDERED.**

s/ Sandra J. Feuerstein

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Sandra J. Feuerstein  
United States District Judge

Dated: February 21, 2012  
Central Islip, New York